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From the Desk of
TIMOTHY A. BAUGHMAN
CHIEF, RESEARCH, TRAINING, AND APPEALS

Hon. Robert Young
Chief Justice
Michigan Supreme Court
3034 W Grand Blvd Ste 8-500
Detroit, MI 48202

Re: Administrative file 2010-11

Dear Chief Justice Young and Justices of the Court:

I must say I was somewhat taken aback by the opposition to the proposed amendment to MCR 2.511 by the Criminal Law Section of the State Bar, which provides no reason for the opposition, stating simply that the Section is opposed to the “proposed changes in these rules, as it relates to the discharge of an unqualified juror.”

Presently, MCR 2.511(D)(1) provides that a challenge for cause exists when the prospective juror “is not qualified to be a juror” by law. This leaves open the possibility of an unqualified juror knowingly being allowed to sit, as whether to *exercise* a challenge for cause is a decision for each party, and thus it seems the parties could permit an unqualified juror to sit by not exercising the appropriate challenge for cause, even though they and the court were aware of the disqualifying fact. But this is contrary to statute. MCL § 600.1337 provides that “When the court finds that a person in attendance at court as a juror *is not qualified to serve as a juror*, or is exempt and claims an exemption, *the court shall discharge him or her from further attendance and service as a juror*” (emphasis supplied). All the proposed amendment does is provide that the court rule conform with the statute, so that if the trial judge discovers that a juror or prospective juror is not qualified to be a juror, that juror must be discharged (rather than a challenge for cause existing). I can’t imagine why the Criminal Law Section would think it appropriate for an unqualified juror to be allowed knowingly to sit by a trial judge, but in any event, my view is that this should not be permitted, and the law—the statute—should be followed.

Thank you for your consideration.

Very truly yours,

TIMOTHY A. BAUGHMAN
Chief, Research, Training, and Appeals